

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:06-cv-977-MEF
)	
MANIFOLD CONSTRUCTION, LLC, et al.,)	
)	
Defendants.)	

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO AMEND ANSWER

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and in support of their motion to amend answer, and files this brief.

INTRODUCTION

On the 31st day of October, 2006, Plaintiff, Ohio Casualty Insurance Company, filed its complaint for declaratory judgment to determine the rights and obligations of Ohio Casualty under a policy of insurance it issued to Defendants, Manifold Construction, LLC and Jack Manifold (hereinafter collectively referred to as "Manifold").

On the 25th day of July, 2007, Whittelsey filed their answer to Plaintiff's complaint. (Doc. #23). On the 26th day of July, 2007, Manifold filed their answer the Plaintiff's complaint. (Doc. #25).

On the 3rd day of August, 2007, this Honorable Court issued a Uniform Scheduling Order (Doc. #29), requiring, in part, that any motions to amend any pleadings are due October 17, 2007.

On the 11th day of October, 2007, a telephonic discovery conference was held before the Honorable Terry F. Moorer, United States Magistrate Judge, regarding discovery issues. Said hearing ended with the parties being directed to meet for a face-to-face discovery conference and, if necessary, to meet with Judge Moorer after said face-to-face meeting on the 28th day of November, 2007, if discovery issues were still not resolved.

On the 17th day of October, 2007, Whittelsey filed their motion to amend their answer to Plaintiff's complaint to add certain affirmative defenses and to adopt any and all affirmative defenses asserted by Manifold.

STATEMENT OF FACTS

A statement of facts is unnecessary in the present brief as the facts of this case have been presented to this Honorable Court on numerous occasions.

STANDARD OF REVIEW

“[I]ssues involving what can broadly be labeled ‘supervision of litigation,’ ...” are to be reviewed for abuse-of-discretion. *Pierce v. Underwood*, 487 U.S. 552, 558 FNI (1988) (*citations omitted*).

ARGUMENT

Pursuant to Section 4 of this Honorable Court's Uniform Scheduling Order (Doc. #29), any motions to amend any pleadings are due October 17, 2007. Fed.R.Civ.P. 15 allows parties to amend pleadings upon leave of court and leave to amend “shall be freely given when justice so requires.”

Due to Plaintiff's failure to produce documents pursuant to legitimate requests, Whittelsey has been unable to review documents that may give rise to additional defenses available to Whittelsey. However, the above stated deadline requires action on Whittelsey's

part; therefore, out of an abundance of caution, Whittelsey seeks to amend their answer (Doc. #23) to add certain affirmative defenses and to adopt any and all affirmative defenses asserted by Manifold. The parties would not be prejudiced by allowing such an amendment.

WHEREFORE, Whittelsey prays this Honorable Court grant Whittelsey's motion to amend their answer as set forth in Exhibit A hereto.

Respectfully submitted this the 17th day of October, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 17th day of October, 2007.

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